

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

CRIMINAL PETITION NO.3673 OF 2019

BETWEEN:

1. M/S. VARSHA CABLES PRIVATE LTD.,
R/AT: NO.344, HEBBAL INDUSTRIAL AREA
MYSURU, MYSURU DISTRICT-570 016
REPRESENTED BY ITS CHAIRMAN
MANAGING DIRECTOR AND SHAREHOLDER
SRI. PUTTARAJU P. GOWDA
S/O SRI. PUTTASWAMY
AGED ABOUT 52 YEARS.
 2. SRI. PUTTARAJU P. GOWDA
S/O SRI PUTTASWAMY
AGED ABOUT 52 YEARS
CHAIRMAN, MANAGING DIRECTOR AND
SHAREHOLDER M/S. VARSHA CABLES PRIVATE LTD.,
R/AT NO.344, HEBBAL INDUSTRIAL AREA
MYSURU-570016.
- ...PETITIONERS



(BY SRI. VENKATESH R. BHAGAT, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY VIJAYANAGAR POLICE STATION
MYSURU, MYSURU DISTRICT-570016
REP. BY STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU-560001.
2. SRI. B. KUMAR (BHOJAPPA KUMAR)
S/O SRI. S. BHOJAPPA
AGED ABOUT 48 YEARS,
R/AT NO.56, 5TH 'A' MAIN

2ND STAGE, GOKULAM, MYSURU
SOLE PROPRIETOR OF M/S. VARSHA INDUSTRIES
65-A-2, HOOTAGALLI INDUSTRIAL AREA
MYSURU-570016.

...RESPONDENTS

(BY SRI. MOHAMMED AYBU ALI, ADDL. SPP FOR R1;
SRI. ADITYA SONDHI, SENIOR COUNSEL FOR (VC)
SRI. A. ABHISHEK AND
SRI. SRIDHAR CHAKKE, ADVOCATES FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C PRAYING TO QUASH THE ORDER DATED 21.03.2019 PASSED IN CRL.RP.NO.313/2018 BY THE VII ADDITIONAL SESSIONS JUDGE, MYSURU ALLOWING R.P PREFERRED BY THE RESPONDENT NO.2 AND CONSEQUENTLY SETTING ASIDE THE ORDER DATED 23.12.2017 PASSED IN C.C.NO.126/2014 ON THE FIEL OF THE I ADDITIONAL SENIOR CIVIL JUDGE AND C.J.M., MYSURU, DISMISING THE DISHCARGE APPLICATION FILED BY RESPONDENT NO.1 HEREIN UNDER SECTION 239 OF CR.P.C FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 104, 177, 403, 406, 420, 405, 415, 425 OF IPC AND SECTIONS 23 TO 25 OF TRADE MARKS ACT AND ALSO 468, 417 OF IPC INVOKED IN THE ADDITIONAL CHARGE SHEET AND TO RESTORE THE DATED 23.12.2017 PASSED IN C.C.NO.126/2014 ON THE FILE OF THE 1ST ADDITIONAL SENIOR CIVIL JUDGE AND C.J.M., MYSURU, DISMISSING THE DISCHARGE APPLICATION FILED BY THE RESPONDENT NO.1 HEREIN UNDER SECTION 239 OF THE CR.P.C AT ANNEXURE-A.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 16.09.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

CAV ORDER

Heard Sri Venkatesh R. Bhagat, learned counsel for petitioners, Sri Mohammed Ayub Ali, learned Additional SPP for respondent No.1/State and Sri Aditya Sondhi, learned Senior counsel for respondent No.2/accused.

2. This petition is filed praying this Court to quash the order passed by the Revisional Court in CrI.R.P.No.313/2018 arising out of C.C.No.126/2014 setting aside the order dated 23.12.2017 passed by the I Additional Senior Civil Judge and CJM, Mysuru in discharging the accused for the offences under Sections 104, 177, 403, 406, 420, 405, 415, 425 of IPC and Sections 23 to 25 of Trade Marks Act and also Sections 468 and 417 of IPC which was invoked in the additional charge sheet and to restore the order dated 23.12.2017 passed in C.C.No.126/2014 on the file of I Additional Senior Civil Judge and CJM, Mysuru to proceed in accordance with law. The prayer is also sought to grant such other relief as this Court deems fit in the circumstances of the case.

3. The factual matrix of case of the complainant while invoking Section 200 of Cr.P.C. is that accused has committed

the offences which have been invoked against him. The complaint is produced as Annexure-B and consequent upon referring the matter under Section 156(3) of Cr.P.C., FIR was registered as per Annexure-C and thereafter, Police have filed the charge sheet as per Annexure-D and Trial Court taken cognizance and issued summons to the accused. It is also case of the petitioners/complainants that Vijayanagara Police have also filed additional charge sheet invoking the offences under Sections 468 and 471 of IPC and additional charge sheet is marked as Annexure-E. It is contended that respondent No.2/accused filed discharge application under Section 239 of Cr.P.C. in terms of Annexure-F and the same is resisted by petitioners/complainants as per Annexure-G. The respondent No.2/accused has also raised additional grounds as per Annexure-H and the Trial Court was pleased to dismiss the application as per Annexure-J and revision petition was filed before the Revisional Court as per Annexure-K and statement of objections and written arguments are also filed by the Public Prosecutor as per Annexure-L. The Revisional Court committed an error in allowing the revision petition and discharging the respondent No.2/accused. Hence, present petition is filed for setting aside the order of discharge.

4. Sri Venkatesh R. Bhagat, learned counsel appearing for petitioners/complainants would vehemently contend that the Revisional Court has failed to take note of the fact that Section 239 of Cr.P.C. shall be exercised only when the contents in the complaint and in the charge sheet and no grounds are made out or charges are groundless then only accused can be discharged. Despite, the prima facie case made out in the complaint as well as in the charge sheet and additional charge sheet, the Revisional Court has erroneously discharged the accused. The counsel also vehemently contend that a specific allegation is made against the respondent No.2/accused and prima facie, the accused has committed an offence of forgery, cheating, criminal breach of trust and fabrication of documents, even though he has no right whatsoever to do so in the transfer agreement. Hence, order discharging the accused is nothing but an error, which leads to miscarriage of justice. The Revisional Court has failed to satisfy itself that there is no prima facie case against the accused and failed to take note of material particulars and that too, particularly the additional charge sheet filed by the police having considered the documents which have been created and used the same fraudulently. It is apparent that at the stage of

framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution have to be accepted as true at that stage and even cannot discuss the validity of those documents and there cannot be defence at the time of seeking discharge.

5. The counsel also in his argument would vehemently contend that the Trial Court failed to take note of document of agreement dated 09.10.2009 and so also the document of 21.10.2009 and so also the resolution and that there was no such meeting on 12.10.2009 and the said documents are created for the purpose of misrepresentation and to get advantage, such letters are addressed to the authorities. The counsel also would vehemently contend that the Trial Court taken note of the material on record and given the reasoning in paragraph Nos.11 to 13 while rejecting the discharge application. But, the Revisional Court taken note of the defence and the same cannot be considered at the time of discharge. The Revisional Court Committed an error in taking note of contents of the agreement. The allegation is clear that it is a case of fabrication in respect of reconstitution of the company and even Revisional Court has not discussed anything about additional charge sheet, particularly in respect of two

documents are concerned, additional charge sheet is filed. The counsel would immediately contend that when the investigation is completed and charge sheet is filed and at the time of considering an application under Section 239 of Cr.P.C., the Court has to only take note of charge sheet materials and the documents. The counsel also would contend that scope of revision is also very limited and failed to take note of contents of the private complaint, wherein specific allegations are made and the charge sheet is also in corollary to the allegations made in the complaint and failed to take note of all these material and even Reviisional Court failed to discuss the very ingredients of the offences which have been invoked against the respondent No.2/accused and proceeded to consider the contents of the agreement. The contents of the agreement would amount to a defence and the same cannot be considered in a revision.

6. Per contra, Sri Aditya Sondhi, learned Senior counsel appearing for respondent No.2/accused in his argument would vehemently contend that a suit was filed in O.S.No.961/2012 on 02.01.2012 and the contents of the suit is the replica of the PCR which was filed subsequently and identical allegations are made in the PCR. The counsel also

brought to notice of this Court paragraph Nos.11 to 16 of the plaint as well as contents of the PCR. The counsel would vehemently contend that the prayer in the suit filed against the respondent No.2/accused is also in respect of the very same relief and the same was dismissed on 30.01.2021. The counsel also brought to notice of this Court the reasoning given by the Court in the said civil suit, wherein the Court has taken note of terms of the agreement between the parties dated 09.10.2009. Those regular first appeals filed are still pending, but suppressing the fact that suit was already filed, PCR was filed. The counsel also brought to notice of this Court, paragraph No.11 of the PCR and also brought to notice of this Court discussion made by the Revisional Court in paragraph Nos.28 to 30, wherein clear finding is given that the same is a civil dispute between the parties. There is no allegation that at the inception, a fraud was played and the same cannot be a ground to initiate a criminal prosecution.

7. Learned Senior counsel for the respondent No.2/accused in support of his argument relied upon judgment the Apex Court in **Crl.A.No.472/2021 [Arising out of Special Leave Petition (Crl.) No.10157/2019]** dated **07.05.2021**. The counsel brought to notice of this Court

paragraph No.15, wherein the Apex Court taken note of position of law as laid down in **MADHU LIMAYE VS. STATE OF MAHARASHTRA** reported in **(1977) 4 SCC 551** and it is held that orders framing charges or refusing discharge are neither interlocutory nor final in nature and are therefore not affected by the bar of Section 397(2) of Cr.P.C. That apart, the Apex Court has unequivocally acknowledged that the High Court is imbued with inherent jurisdiction to prevent abuse of process or to secure ends of justice having regard to the facts and circumstances of individual cases. While exercising its jurisdiction, ought to be circumspect. The discretion vested in the High Court is to be invoked carefully and judiciously for effective and timely administration of criminal justice system. In exceptional cases, there should be interference, among which there is likelihood of serious prejudice to the rights of a citizen. For example, when the contents of a complaint or the other purported material on record is a brazen attempt to persecute an innocent person, it becomes imperative upon the Court to prevent the abuse of process of law.

8. The counsel also brought to notice of this Court discussion made in paragraph No.16 that the Court has to consider the broad probabilities, total effect of evidence and

documents produced and the basic infirmities appearing in the case and the Court has sufficient discretion to order further investigation in appropriate cases relying upon the judgment in **UNION OF INDIA vs. PRAFULLA KUMAR SAMAL** reported in **(1979) 3 SCC 4**. The counsel also brought to notice of this Court paragraph No.18, wherein it is held that the High Court has committed jurisdictional error by not entertaining the revision petition on merits and overlooking the fact that 'discharge' is a valuable right provided to the accused. The counsel referring this judgment would vehemently contend that the Revisional Court rightly exercised the revisional jurisdiction relying upon this judgment.

9. The counsel also relied upon the order passed in **M/S. KERALA TRANSPORT CO. vs. D.S. SOMA SHEKAR AND OTHERS** dated **25.09.1981**. The counsel brought to notice of this Court paragraph No.12, wherein also discussion was made with regard to scope of revisional jurisdiction on the High Court, wherein relied upon judgment of in **PRANAB KUMAR MITRA vs. STATE OF WEST BENGAL** reported in **A.I.R. 1959 S.C. 144**, so also brought to the notice of this Court paragraph No.13, wherein also a detailed discussion was made referring the case in **THAKUR RAM vs. STATE OF**

BIHAR reported in **A.I.R. 1966 S.C. 911**, wherein considering the revisional powers under Section 435 of Cr.P.C. (Old Code), an observation made in the said judgment is taken note of and held that the ratio laid down by the Supreme Court makes it clear that in criminal matters the party who is treated as the 'aggrieved party' is the State, which is the custodian of the social interests of the community at large; so it is the primary duty of the State to take all the steps necessary for bringing the person who has acted against the social interest of the community to book. It is also observed that criminal law is not to be used as an instrument of wrecking private vengeance by an aggrieved party against the person, who according to that party had caused injury to it. Applying the aforesaid ratio to the facts of the case, it is seen that M/s.Kerala Transport Co., the petitioner in all these revision petitions is the informant of commission of cognizable offences by the accused and that it has been aggrieved by the illegal acts of the accused along with the State Bank of Mysore and as such an aggrieved party. M/s. Kerala Transport Co., ceases to be an aggrieved party the moment the State steps into its place by placing a charge-sheet against the accused and it is for the State to continue the proceedings to its conclusion. M/s.Kerala Transport Co.,

recedes to the position of a third party and if it is permitted to prosecute the revision petitions parallel to the revision petitions filed by the State in respect of the very same impugned orders, it would amount to permitting M/s. Kerala Transport Co., a third party, to use criminal law to wreck private vengeance against the accused. The counsel referring this judgment would vehemently contend that once the State investigated the matter and filed the charge sheet, the State has not filed any revision and this revision petition is filed by the de-facto complainant only to wreck vengeance and the de-facto complainant cannot question the discharge application by filing this petition and no locus to file this petition.

10. In reply to the argument of learned Senior counsel for respondent No.2/accused, learned counsel appearing for petitioners would vehemently contend that the Revisional Court has committed an error in discharging the accused when specific allegations are made. The respondent No.2/accused has indulged in creation of documents and offence of forgery and using those created documents committed fraud.

11. Having heard Sri Venkatesh R. Bhagat, learned counsel appearing for petitioners, Sri Mohammed Ayub Ali,

learned Additional SPP appearing for respondent No.1/State and Sri Aditya Sondhi, learned Senior counsel appearing for respondent No.2/accused and also on perusal of material available on record viz., the order passed by the Trial Court in rejecting the discharge application and reversing the same by the Revisional Court, the points that would arise for consideration of this Court are:

- (i) Whether the Revisional Court committed an error in discharging the accused for the offences invoked against the respondent 2/accused and whether it requires interference?
- (ii) What order?

Point No. (i):

12. Having considered the material available on record, it is not in dispute that a PCR was filed and the same is numbered as 14/2012 and the same was referred under Section 156(3) of Cr.P.C. and PSI was directed to investigate the matter and file the charge sheet. The Court has to take note of specific allegations made in the PCR, particularly in paragraph No.11, as there was an agreement between the complainant and the accused in terms of document No.6 dated

09.10.2009 brought to notice of this court by learned Senior counsel for respondent No.2/accused. In paragraph No.14, the complainant also made an allegation that accused commenced business in the name of M/s. Varsha Industries, wherein the accused started manufacturing, assembling, buying and selling, importing, exporting, distributing and marketing and dealing with various types of PVC Insulated Copper conductors, PVC/Rubber Insulated and non-insulated products. The said business was being carried on by the complainants was replicated by the accused. It is contented that first complainant, M/s.Varsha Cables Pvt. Ltd., was at no point of time restructured as M/s.Varsha Industries nor it has been divided as Varsha Industries at any point of time. But, in the complaint in paragraph No.15, it is urged that second complainant came to know recently that the respondent-accused while in office as a Director of the first complainant company and after demitting his office as a Director of the first complainant company, has acted fraudulently and misrepresented to the Customers' of the first complainant company that the first complainant company has been restructured as M/s. Varsha Industries and that the management of the first complainant company has also been

restructured and requested the Clients of the first complainant company to amend their Vendor Registration forms and other records accordingly. Further fresh enquiries were requested to be raised on M/s. Varsha Industries. The contact numbers, email id and other registration numbers of the said M/s. Varsha Industries were also stated to the Clients of the first complainant company. A letter dated 24.10.2009 issued by the accused to M/s. Cipla Limited, Goa, an esteemed client of the first complainant company mentioning the aforementioned acts is produced as Document No.7 as an example. Similarly, another letter issued to M/s. Jubilant Organosys Ltd., Mysore dated 24.10.2009 is also produced as Document No.8 as an example. The second complainant was shocked when he realized that the accused had falsely and illegally represented to the first complainant Customers' that the first complainant has been converted into M/s. Varsha Industries. The accused had siphoned off big and prominent Customers' of the first complainant by such acts and misrepresentation.

13. It is also urged in paragraph No.16 that due to the above acts, misrepresentation and misusing his position as the Director and after demitting office as a Director of the company, the accused has misled the Customers' of the first

complainant with whom Vendors registration has been registered by the first complainant, Varsha Cables Pvt. Ltd. to change the Vendors Registration from Varsha Cables Pvt. Ltd., to Varsha Industries which is an illegal act of the accused. The counsel appearing for the petitioners mainly brought to notice of this Court those letters and the additional charge sheet filed by the Investigating Officer, wherein also specific allegations are made that Varsha Cables Pvt. Ltd., letter head was used vide letter 21.10.2009 for change of BIS Licence, wherein reference is also made with regard to Constituency of the said company for restructuring the same and so also, the minutes of the board meeting was created without any such meeting and resolution was passed and the same is a fabricated document. It is also an allegation in the additional charge sheet that accused No.1 had used the letter head of C.W.1 fraudulently and dishonestly and even though, he was ceased from the said Directorship of the company of the C.W.1, with an intention to dishonestly siphon the clients of C.W.1, indulged in such act and while filing the additional charge sheet, offence under Sections 468 and 471 of IPC are invoked.

14. The counsel also brought to notice of this Court letter dated 04.11.2009 addressed to the Director, M/s. Bureau

of Indian Standards, Peenya Industrial Area and so also letter dated 21.10.2009 and the said letters are signed by respondent No.2/accused. The counsel also brought to notice of this Court that in the letter head of Varsha Cables Pvt. Ltd., a document was created on 12.10.2009 as minutes of the board meeting and the same is also signed by respondent No.2/accused. The counsel also brought to notice of this Court agreement dated 09.10.2009 and the same was signed between the parties and the letters which have been addressed are subsequent to the said agreement. In terms of the agreement, the respondent No.2/accused ceased to have no manner of right, title or interest over the company.

15. No doubt, the Court has to take note of contents of discharge application filed before the Court and also additional grounds urged before the Trial Court for discharge, the Trial Court while passing the order of rejection, particularly in paragraph Nos.10 to 12 comes to the conclusion that there are several allegations against the accused both in the original charge sheet as well as in the additional charge sheet and particularly, in paragraph No.11 comes to the conclusion that as per the resolutions of the Board of Directors of Varsha Cables Pvt. Ltd. on 12.10.2009, he has got changed the

licenses issued by the Bureau of Indian Standards, Bengaluru, standing in the name of Varsha Cables Pvt. Ltd. to his name. But, the complainant contends that the minutes of Board meeting has been created by the accused and the accused by using the letter heads of Varsha Cable Pvt. Ltd., prepared duplicate letter heads and used the same to cause loss to the complainant and to his company. In paragraph No.12, taken note of allegation regarding change of telephone number of the Varsha Cables Pvt. Ltd. to Varsha Industries of the accused. But, contention of the accused is that he has transferred the telephone number on the basis of the agreement entered into between himself and complainant. The same has to be decided only during the trial and the said defence cannot be taken note of in discharge application. However, the Revisional Court while passing an order, in detail, taken note of terms and conditions of the agreement between the parties and though points for consideration is framed by the Revisional Court for consideration, but while considering the material facts in point No.1, proceeded to pass an order that Investigating Officer attached to Vijayanagara Police Station has also not collected any material which shows that the accused has misrepresented the general public by stating that M/s. Varsha Industries is a

Branch or Sister concern of the first complainant and that it had sustained any loss as alleged. But, this observation is made in the very beginning in paragraph No.11. Hence, it is clear that the Revisional Court proceeded without examining the material on record in the beginning itself and the fact that he was a Director and he had resigned is not in dispute and he had set up his own Proprietorship concern M/s. Varsha Industries is also not in dispute. But, allegations are very clear that he had indulged in creation of minutes of the meeting and there was no such minutes of meeting and resolution and the same is subsequent to agreement between the original complainant and the accused.

16. The Revisional Court erroneously proceeded considering the terms of the agreement and the same cannot be done while exercising the revisional power, that too, while considering the discharge application. No doubt, the Revisional Court discussed that only after appreciation of the evidence and material available on record, the Civil Court can give a finding about violation of paid money and even though such observation is made, proceeded to arrive at a conclusion that plain reading of contents of the complaint filed against the accused shows all traits of passing-off action in paragraph

Nos.28 to 30 and comes to the conclusion that there was a civil suit and dispute between the parties is civil in nature, but failed to take note of the allegations made in the complaint as well as in the charge sheet and particularly, the additional charge sheet, wherein also specific allegations are made regarding use of letter head as well as creation of minutes of meeting in the letter head of the complainant and subsequently, offences under Sections 468 and 471 were also invoked while filing the additional charge sheet.

17. Having perused the order of Revisional Court, nothing is discussed with regard to contents of the complaint, charge sheet and also the additional charge sheet material with regard to criminal act of respondent No.2/accused and proceeded to set aside the order of Trial Court i.e., rejection of discharge application. The Trial Court in paragraph Nos.10 to 13 given reasoning in respect of criminal act of the respondent in creation of documents and making use of the said documents and the same has not been discussed by the Revisional Court.

18. Learned Senior counsel appearing for respondent No.2/accused relied upon the order passed in ***M/s. Kerala Transport Co.*** (supra) with regard to locus is concerned and

once the investigation is completed and charge sheet is filed, the State has to represent and State has not filed any revision. But, the petitioners/complainants have filed the revision. The said contention cannot be accepted. It has to be noted that private complaint is filed and the same was referred for investigation under Section 156(3) of Cr.P.C. Thereafter, investigation is conducted and charge sheet is filed.

19. This Court would like to rely upon the judgment of Apex Court in **SUNDEEP KUMAR BAFNA vs. STATE OF MAHARASHTRA AND ANOTHER** reported in **(2014) 16 SCC 623** held that complainant, informant or aggrieved party has no vested right to directly conduct prosecution, but counsel for private party can assist Public Prosecutor in discharging his responsibility. Even an observation is made that Magistrate or Sessions Judge, if forms opinion that prosecution likely to fail, may give formal hearing to such private party. But no hearing needed in instant case where such private party is an accomplished criminal lawyer and represented by Senior Counsel before Supreme Court which has not formed any opinion adverse to prosecution and also held that, it should not only be robust, comprehensive and effective but should also be free, fair and diligent and deprivation or curtailment of personal

liberty of a person. In this judgment also discussed with regard to complying of principles of natural justice. In view of detailed discussion made in the judgment, the order passed in **M/s. Kerala Transport Co.** (supra) will not come to the aid of counsel and in view of discharge made by the Revisional Court, the right of the de-facto complainant is affected. Hence, no locus cannot be accepted. The Court also while discharging the accused has to take note of scope of revision and also the scope of application filed under Section 239 of Cr.P.C.

20. This Court also would like to rely upon the judgment of Apex Court in **STATE BY KARNATAKA LOKAYUKTA, POLICE STATION, BENGALURU vs. M.R. HIREMATH** reported in **(2019) 7 SCC 515** with regard to entering into questions of evidentiary value of material adduced by prosecution at the stage of considering discharge application is impermissible.

21. This Court also would like to rely upon judgment of the Apex Court in **SRILEKHA SENTILKUMAR vs. DEPUTY SUPERINTENDENT OF POLICE, CENTRAL BUREAU OF INVESTIGATION, ACB, CHENNAI** reported in **(2019) 7 SCC 82**, with regard to discharge is concerned, wherein it is held

with regard to impermissibility of looking into the merits of disputed facts of the case, prayer for discharge dismissed by the Courts below and held that the issues urged by appellant-accused and the same having been refuted by respondent are such that they can be decided more appropriately and properly during trial after evidence is adduced by the parties.

22. This Court also would like to rely upon judgment of the Apex Court in **J.K. INTERNATIONAL vs. STATE (GOVT. OF NCT OF DELHI)** reported in **(2001) 3 SCC 462**, wherein the situation there is different, as the accused approached the High Court for quashing the criminal proceedings initiated by the appellant. It may not be that the complainant should have been made a party by the accused himself in the petition for quashing the criminal proceedings, as the accused has no such obligation when the case was charge-sheeted by the police. It is predominantly the concern of the State to continue the prosecution. But when the complainant wishes to be heard when the criminal proceedings are sought to be quashed, it would be a negation of justice to him if he is foreclosed from being heard even after he makes a request to the court in that behalf. Hence, it is clear that Apex Court held that whenever the first informant wishes to be heard when criminal

proceedings are sought to be quashed, he needs to be granted an opportunity of hearing. It is observed that, if the Revision Petition is allowed, then the criminal proceedings initiated by the petitioner/First Informant would be quashed by granting discharge to the accused therein. In this view of the matter, the petitioner/First Informant is certainly entitled for hearing in the Revision Petition claiming discharge by the accused. Even in the matter of **Sundeep Kumar Bafna** (supra), it is held by the Apex Court that if the proceedings are likely to be quashed, then the complainant should be heard at that stage. Hence, the very contention of learned counsel for the petitioners/complainants that these petitioners cannot be heard cannot be accepted.

23. No doubt, learned Senior counsel appearing for respondent No.2/accused relied upon judgment of the Apex Court in **Sanjay Kumar Rai** in **Crl.A.No.472/2021** (supra) and the principle is very clear that if it leads to a miscarriage of justice and the evidence and documents produced are suffering from basic infirmities, the Court also while considering discharge application is not to act as a mere post office and consider the material. This judgment also will not come to the aid of learned Senior counsel appearing for respondent

No.2/accused and material collected by the Investigating Officers during the course of investigation and the charge-sheet material is very clear to proceed against respondent No.2/accused, in view of specific accusation regarding creation of document and indulging in an act of forgery.

24. Learned Senior counsel appearing for respondent No.2/accused also filed statement of objections along with the documents which have been produced as Annexures-R1 to R9. The suit in O.S.No.961/2011 is produced as Annexure-R1, copy of written statement in O.S.No.961/2011 is Annexure-R2, copy of online extract of order dated 03.11.2012 in O.S.No.961/2011 and copy of the plaint in O.S.No.7/2012 are produced as Annexures-R3 and R4. The copy of the written statement in O.S.No.7/2012 and judgment delivered in O.S.No.7/2012 and 30.01.2021, wherein suit was dismissed are produced as Annexures-R5 and R6. The copy of the plaint in O.S.No.10/2015 filed before the IV Additional Senior Civil Judge, Mysuru, written statement and copy of the judgment delivered in O.S.No.10/2015 are produced as Annexures-R7 to R9 respectively and counsel would contend that very claim of the petitioners herein was not accepted and the judgment and decree passed in both the suits are in favour of the respondent

No.2/accused. So also, it is the contention that contents of the plaint in O.S. No.961/2011 is replica of the present complaint. It is also not in dispute that suit was filed earlier and complaint was filed subsequently. The Court has to take note of very contention that contents of the plaint and the contents of the complaint are one and the same. But, in the complaint from paragraph No.11 onwards, it is stated with regard to conduct of the respondent No.2/accused and also creation of document subsequent to agreement dated 09.10.2009 is also averred and the same is taken note of by the police while registering the case, particularly additional charge sheet is in respect of concoction of document i.e., particularly minutes of the board meeting and getting transfer of the records.

25. When such allegations are made, even though there was a suit earlier to the complaint, the Court has to take note of contents of the complaint, so also the material on record. The Trial Court has taken note of the same while rejecting the application under Section 239 of Cr.P.C., particularly in paragraph Nos.10, 11, 12 and 13. But, the same has not been met by the Revisional Court while considering the revisional powers and failed to take note of scope of revision and instead proceeded in an erroneous manner considering the defence set

out and defence cannot be set out in an application filed under Section 239 of Cr.P.C. and the Court has to only look into whether there are material or not to frame the charge or to discharge the accused. The same has been considered by the Trial Court, but the Revisional Court exercised its revisional powers beyond its limit, particularly considering the document of agreement, but failed to take note of accusation made against the accused in creation of document. The Trial Court has given reasons in paragraph Nos.10 to 13 of the order while rejecting the application for discharge and the very approach of the Revisional Court is not within the scope of revision and instead considered the defence. Hence, committed an error.

26. The very contention that civil suit was filed earlier and subsequently, criminal complaint was filed cannot be a ground to discharge the respondent No.2/accused and the Court has to look into the material available on record as well as the accusation made in the complaint and when the criminal act is attributed for creation of document and the accused made use of the said letter head and created minutes of the meeting for passing resolution, the same has to be adjudicated only during the course of trial and not at the stage of

considering the application under Section 239 of Cr.P.C. Accordingly, I answer point No.(i) as 'affirmative'.

Point No.(ii):

27. In view of the discussions made above, I pass the following:

ORDER

- (i) The criminal petition is allowed.
- (ii) The order passed by the Revisional Court in Crl.R.P.No.313/2018 dated 21.03.2019 passed by the VII Additional Sessions Judge, Mysuru, is hereby set aside. Consequently, order passed by the Trial Court in C.C.No.126/2014 dated 23.12.2017 passed by the I Additional Senior Civil Judge and CJM, Mysuru rejecting the application filed under Section 239 of Cr.P.C. is restored.
- (iii) The observations made by this Court while considering this petition shall not influence the Trial Court while considering the matter on merits.

**Sd/-
(H.P.SANDESH)
JUDGE**

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